

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0540**

State of Minnesota,
Respondent,

vs.

William Joseph Garbow,
Appellant.

**Filed October 30, 2023
Affirmed
Larkin, Judge**

Itasca County District Court
File No. 31-CR-18-3242

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Matti R. Adam, Itasca County Attorney, Cassidy L. Villeneuve, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the revocation of his probation, arguing that the district court improperly revoked his probation without having found that the policies favoring probation were outweighed by the need for confinement and that the record lacks evidence to support such a finding. We affirm.

FACTS

In 2018, respondent State of Minnesota charged appellant William Joseph Garbow with one count of aiding an offender. Garbow entered into a plea agreement and pleaded guilty to the charge with the understanding that he would receive a 22-month stayed sentence, a dispositional departure from the presumptive 19-month executed sentence.

The probation department prepared a presentence investigation report (PSI) recommending that the district court impose the presumptive executed sentence. The PSI noted that Garbow had “an extensive criminal history, including ten prior felony level convictions.” In April 2019, despite the PSI’s recommendation, the district court adopted the plea agreement, imposed a 22-month stayed sentence, and placed Garbow on probation for four years. Garbow’s terms of probation required him to contact his probation agent as directed, remain law abiding, refrain from using alcohol or controlled substances, and submit to random testing.

In August 2019, the probation department filed a violation report alleging that Garbow had violated the terms of his probation by failing to contact his probation agent as directed. The violation report noted that Garbow’s “whereabouts and activities are

unknown.” In November 2022, Garbow was arrested and charged with several offenses, including fifth-degree controlled-substance crime, driving while impaired, refusal to submit to chemical testing, and fleeing a police officer in a motor vehicle. Based on the new charges, the probation department filed an addendum to the violation report, alleging that Garbow violated the terms of his probation by failing to remain law abiding, by using alcohol or controlled substances, and by failing to submit to random testing.

Garbow pleaded guilty to fifth-degree controlled-substance crime and refusal to submit to chemical testing. He also admitted that he violated the terms of his probation by failing to maintain contact with his probation agent as directed, by failing to remain law abiding, by using alcohol and controlled substances, and by failing to submit to random testing.

At the probation-disposition hearing, the state recommended that Garbow’s sentence be executed. The state argued that the need for confinement outweighed the policies favoring probation and that it would unduly depreciate the seriousness of Garbow’s violations if probation were not revoked. The state noted that Garbow was sentenced in 2019 and “reported to probation only two times before absconding from supervision,” that Garbow was “on warrant status for over three years,” and that his new charges constituted “his 12th felony.” The state also highlighted the fact that Garbow had received a downward dispositional departure in this case.

Garbow argued for continued probation. In challenging the state’s assertion that the downward dispositional departure justified a revocation of probation, defense counsel explained that, due to the passage of time, several of Garbow’s criminal-history points had

decayed, and therefore he likely would not be sentenced “at that same level today.” Although Garbow had not maintained contact with his probation agent and was on warrant status for several years, defense counsel argued that Garbow had not picked up new charges until his most recent offenses, much of this time was during the COVID-19 pandemic, and Garbow was caring for his family members.

Defense counsel informed the district court that Garbow would be working to get his job back at a solid waste company, that he had support from his family and desired to be in their lives, that he had successfully completed parole in the past, and that he was willing to attend treatment. The court also heard from Garbow, who asserted that his children provided a “good incentive” for him to complete probation.

The district court called a brief recess to consider the parties’ arguments. Upon returning, the district court revoked Garbow’s probation and executed his sentence. The court found that Garbow admitted to the four alleged probation violations, that the violations were “intentional and without good excuse,” and that not ordering the execution of Garbow’s sentence “would unduly depreciate the seriousness of the violations.” The district court also noted that Garbow’s most recent offenses constituted a “significant” public-safety risk.

Garbow appeals.

DECISION

Garbow contends that the district court abused its discretion by revoking his probation because the district court failed to find “that the policies favoring probation were

outweighed by a need for confinement” and because “the record lacks sufficient evidence to support this finding.”

“The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation and should be reversed only if there is a clear abuse of that discretion.” *State v. Austin*, 295 N.W.2d 246, 249-50 (Minn. 1980). A district court “abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

Before a district court revokes a defendant’s probation, it must (1) “designate the specific condition or conditions that were violated”; (2) “find that the violation was intentional or inexcusable”; and (3) “find that [the] need for confinement outweighs the policies favoring probation.” *Austin*, 295 N.W.2d at 250. We review de novo whether a district court made the required *Austin* findings. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

Garbow does not dispute that the district court made sufficient findings on the first two *Austin* factors. Indeed, Garbow admitted to all four alleged violations, and the district court found the violations to be intentional. If a district court finds an intentional or inexcusable violation of a specific probationary condition, it must “determine whether the need for confinement outweighs the policies favoring probation.” *Id.* at 606. In doing so, the district court “must balance the probationer’s interest in freedom and the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 606-07 (quotation omitted). The district court must bear in mind that “the purpose of probation is rehabilitation and

revocation should be used only as a last resort when treatment has failed.” *Id.* at 606 (quotation omitted).

In deciding whether to revoke probation, a district court should determine whether “confinement is necessary to protect the public from further criminal activity by the offender,” “the offender is in need of correctional treatment which can most effectively be provided if he is confined,” or “it would unduly depreciate the seriousness of the violation if probation were not revoked.” *Id.* at 607 (quotation omitted).

Garbow asserts that the district court failed to provide a “reasoned analysis” of the third *Austin* factor, and he argues that we should not “search through the record to infer the district court’s thought process and analysis.”

The district court did not explicitly say that the principles that favor probation were outweighed by the need for incarceration. Nonetheless, we are satisfied that the district court reached that conclusion and that the record supports it. The district court expressly stated that not revoking would unduly depreciate the seriousness of the violations, which is one of the three reasons a court may give to find that the principles that favor probation are outweighed by the need for incarceration. A district court need only to rely on the existence of one of those reasons to support a determination that the need for confinement outweighs the policies favoring probation. *See id.* (using the disjunctive “or” in discussing the bases for revocation).

Moreover, the record shows that the district court balanced Garbow’s interest in freedom with the state’s interest in ensuring his rehabilitation and public safety. The court expressly acknowledged Garbow’s desire for a “second chance” but found that Garbow

posed a public-safety risk because he absconded for more than three years; failed to follow the conditions of probation; allegedly drove while impaired with a passenger in the car; and attempted to evade police, which resulted in a “pit maneuver” to stop his vehicle. The district court also noted that Garbow’s underlying sentence constituted a dispositional departure. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015) (providing that a district court may consider a grant of a downward dispositional departure when deciding whether to revoke probation), *aff’d*, 883 N.W.2d 790 (Minn. 2016).

“[I]n making the three *Austin* findings, courts are not charged with merely conforming to procedural requirements; rather, courts must seek to convey their substantive reasons for revocation and the evidence relied upon.” *Modtland*, 695 N.W.2d at 608. In this case, the district court conveyed its substantive reasons for revocation and the circumstances on which it relied, and in doing so adequately considered and determined that the requirements of the third *Austin* factor were met.

Garbow points to several nonprecedential opinions from this court to support his assertion that the district court’s findings in this case were inadequate. Although such opinions are not precedential authority, they may be persuasive. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993). Nevertheless, Garbow’s cited cases do not persuade us to reverse because in those cases—unlike here—the district court did not provide any meaningful analysis of the third *Austin* factor or the *Modtland* subfactors. *See State v. Hill*, No. A19-0313, 2019 WL 5107465, at *5 (Minn. App. Oct. 14, 2019) (“[T]he district court made sparse findings before revoking Hill’s probation.”); *State v. Sayers*, No. A15-1345, 2016 WL 1619389, at *3 (Minn. App. Apr. 25, 2016) (“The district court here

did not explicitly consider any of the three subfactors, did not make any findings on the policies favoring probation, and did not make an explicit finding as to whether the need for Sayers’s confinement outweighed the strong policies favoring probation.”); *State v. Jones*, No. A14-2058, 2015 WL 4528943, at *4 (Minn. App. July 6, 2015) (“It would contradict *Modtland* to allow a district court’s general agreement with a party’s argument to qualify as a finding on the third *Austin* factor simply because the party previously discussed some of the sub-factors.”).

In sum, the district court conveyed its substantive reasons for revocation and in doing so adequately addressed the third *Austin* factor. We therefore affirm.

Affirmed.